



ON-THE-JOB

QUARTERLY NEWSLETTER

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ACHIEVING SAFETY IN UTAH'S WORKPLACES AND FAIRNESS IN EMPLOYMENT AND HOUSING



A word from the Commissioner

The Labor Commission has unveiled its new website! The redesign is more service-oriented and user friendly. Check it out at www.laborcommission.utah.gov.

Please let us know what you think at laborcom@utah.gov.

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**Our Office Hours are
Monday through Friday 8-5**

(Closed for Memorial Day / May 28th)

Responding to a Workers' Compensation Penalty

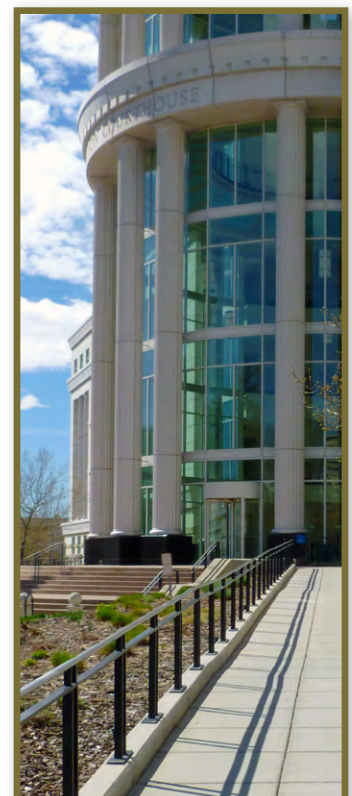
By: **Industrial Accidents Division**

In difficult economic times, an employer may decide to cut costs by cancelling their workers' compensation (WC) Coverage. As a small employer, you may not realize you are required to have workers' compensation insurance. However, having WC coverage is always a good idea. Not only is it the law, workers compensation coverage provides the exclusive remedy for work-related injuries. This means that except under very limited circumstances, workers' compensation insurance protects you as the employer from being sued for remedies other than what is provided under the Workers Compensation Act.

While Utah has one of the smallest groups of compliance officers in the U.S. who investigate cases to determine if employers have the required Workers' Compensation insurance, is also one of the best. Last year alone over 23,000 employers were flagged in our monitoring system as not having workers' compensation coverage, with an estimated 4,700,000 employees at risk. Some of these were resolved by a simple "clean up" of the employer data, but a large number still needs further investigation.

The Division places a strong focus on educating employers about the process which officers use to determine whether an employer is in compliance with the law. Initially, a notice of non-compliance is sent to them advising the employer that we cannot locate evidence of workers' compensation coverage for their business. Typically this problem is quickly resolved by providing the Division with

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Responding to a WC Penalty *continued*

the proper employer's workers' compensation policy coverage information or other verification that the company has no employees.

At times, we find employers actively operating a business without the required WC coverage for their employees. In those instances, penalties are assessed. The minimum penalty is \$1,000; penalties are deposited into the Uninsured Employers Fund. This fund assists with payments to employees who are injured on the job, and whose employer is uninsured and either insolvent or bankrupt.

If you have received a non-compliance notice, the outcome regarding the penalties will vary greatly depending on various factors. Protocols are in place which includes the possibility of waiving or reducing fines based on your payroll information. Some of these factors include but are not limited to:

- 1. If required, do you now have workers' compensation coverage in place?**
- 2. Is this your 1st non-compliance offense?**
- 3. What is the length of time without workers compensation coverage?**
- 4. How many employees were employed at the time you were without coverage?**

The Division will consider other lapses in coverage and well as previous violations (penalties) in its determination.

The Division strives to maintain timely communications with employers regarding their penalties, potential penalty reductions, and allowing payment schedules, often resulting in many employers resolving their penalties prior to going to collections.



The Division works with the Office of State Debt Collections (OSDC) for accounts that needed to be sent to Collections. In 2011, the Division collected \$1,150,000 in-house and \$995,000 through OSDC efforts.

Often non-compliance notices are a result of incomplete information about your company in our system, so ensuring that the Department of Workforce Services (DWS), your insurance carrier and the Division receive prompt notification of any important changes regarding your company's coverage status, number of employees, changes of address and more, will prevent these problems from occurring.

Employers and employees can find answers to frequently asked questions about workers' compensation by visiting our Division page at: www.laborcommission.utah.gov



UOSH Lean Six Sigma Project – A Year of Positive Change

By: UOSH Lean Six Sigma Team



UOSH Project Team Members

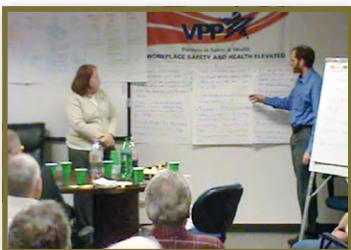
Andy Zampedri

Kenney Christensen

Charlie Grizzell

Isaac Talbot

Joy Lawrence



Utah OSHA (UOSH) has jurisdiction over 1.3 million workers in the private and public sector and an estimated 80,000 workplaces in Utah. Last year, over 30,000 workers were seriously injured and 10 workers were fatally injured. UOSH is comprised of only 32 full time employees so one of the challenges faced by the Division is optimization of the current compliance case management process, as well as reducing the time officers currently spend in non-value related activities.

In February 2012, UOSH implemented a new evaluation process designed to improve the quality and efficiency of inspections and case management protocols by using Lean Six Sigma (L6S) program methodology. To undertake this complex task, an seven member project team was created comprised of five UOSH employees and two representatives from private industry (*Christina Ross, Western Human Resource Manager for Morton Salt and John Hymel, Safety Director for Jacobsen Construction Company, Inc.*) who provided valuable contributions to the analysis of the existing process and feedback regarding process improvement.

The first phase of the project was to map out the existing compliance process in detail, develop a description of boundaries for the inspection process, identify waste and their root causes, develop solutions, and provide communication and feedback to the Steering committee for review and approval. The team quickly identified three major bottlenecks which caused the majority of delays: 1) the report review process, 2) multiple and redundant forms, and 3) lengthy inspection reports with unnecessary details.

Next, the project team began working on recommendations for improvement. This included major revisions to the Division's Standard Operating Procedures manuals, a complete revamping of the review process for compliance reports, and a new streamlined method of information gathering and case file management.

In August 2011, the team conducted a successful field test of the new process, which was then expanded to include all compliance officers and continued through February 2012. At the end of the field test period, the challenges were evaluated and compared to the significant benefits acquired with the new process.

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UOSH Lean Six Sigma Project *continued*

During the L6S field trial period, the following measurable benefits were identified:

1. Considerable improvement in time lines for case completion: 52% of cases were completed in 20 days or less, and only 21% took over 40 days to complete. This essentially cut the time to process cases in half.
2. All of the Standard Operating Procedures manuals and review processes were completely re-written.

So what is the positive impact of this new more efficient process for the workers and employers in the State of Utah? The Division is able to conduct more inspections, as well as better understand where UOSH can have the most impact on worker safety. We seek to increase support services to employers and workers, and this new process will allow staff to spend more time providing compliance assistance to employers, conducting more safety interventions with workers exposed to hazardous situations and working more efficiently on preventing serious injuries and fatalities.



The complete involvement, commitment and participation of the UOSH staff, and the continued support and contributions of Steering Team members Chris Bardin, Director of Safety and Health for The Layton Companies; D. Paul Riley, Global Safety Manager for the Risk Management Division of The Church of Jesus Christ of Latter-Day Saints; Thomas E. Bingham, President of the Utah Manufacturer's Association, and Labor Commission Division Directors and Management has been fundamental to the success of this project.

What is the future of L6S in UOSH? The future implementation of an integrated enterprise-wide management system for all functions in the UOSH Division. And this is just the beginning.





City Creek Center

By: Division of Boiler, Elevator and Coal Mine Safety

March 22 - the date for the long awaited grand opening of the new downtown mall, the City Creek Center. This project has been the largest construction project of its kind in the country and it has been several years in the making. From the day we all watched the demolition of the two existing malls leaving a five story deep hole in our city floor to the erection of several new towers, some reaching 32 stories into the sky, we had one question: "What will it look like when it's done?"

The City Creek Center has over 150 escalators and elevators, including the first two semi-truck elevators in the country, shown in the photos below.



This new Center is expected to bring the crowds back to the downtown. This Center encompasses high rise residential and corporate spaces with views of the Wasatch Front and the downtown area. Nordstrom's, H&M, Forever 21, Macy's, Tiffany's and many others are represented. There will also be many fine dining restaurants in addition to a traditional food court. The Center stretches from State Street west to West Temple street with wide open courtyards and a rock-lined creek running down the center. The Center will host many water fountains and waterfalls; as well as a "ring of fire."

So what does this have to do with the Utah Labor Commission? The Division of Boiler, Elevator and Coal Mine Safety and some of its inspectors, Michael Simmons (elevators), Rodney Sweet (boilers) and Ronald Long (truck elevators) have been involved with the project since its inception. They were part of planning

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meetings with architects, engineers, and contractors concerning the elevators, escalators and boilers. There are over 150 elevators and escalators and more than 70 boilers in the Center!

There have been many difficult decisions that had to be made in order to insure the safe installation and operation of these units while not taking away from the owner's vision of the Center. There are many public elevators located throughout the Center, as well as numerous service and freight elevators that are out-

of-view. The escalators will bring visitors swiftly into the courtyard area from the four stories of underground parking at both ends of the Center.

The Center also has the first two semi-truck elevators in the country; these units will lower 80,000 pound (40 ton) trucks five stories underground to the loading dock area. This great idea will keep these large trucks from creating traffic problems while parked outside the Center on the street.

Even though the boilers are out of sight, they perform a much needed function, providing a temperature controlled environment. Due to the outdoor environment, the Center's walking paths are heated to keep snow and ice from accumulating. To accomplish this the Center employs 34 boilers, all in one large heating room. Each of these boilers has a capacity of 3 million btu's. Multiple small boilers are being used for efficiency and cost savings, as opposed to one or two large boilers in the old ZCMI and Crossroads malls. These boilers provide heat and hot water to the entire retail space - two full blocks.

There are so many things to see and do, you will just have to come and discover them for yourself. To learn more go to www.shopcitycreekcenter.com. The Boiler, Elevator and Coal Mine Safety Division of the Utah Labor Commission is proud of its involvement insuring the safety of all the Center's visitors.





Understanding Fair Housing Laws

By Heather Gunnarson, UALD Division Director

The Utah Antidiscrimination & Labor Division (UALD) has been awarded a Partnership Grant from the U.S. Department of Housing & Urban Development (HUD) to partner with the Disability Law Center (DLC) in Salt Lake City, to conduct a two-fold outreach initiative, by focusing on offering fair housing education and training programs in Utah's rural areas and to allow the DLC to conduct 120 reviews for housing discrimination in the Wasatch Front.

UALD currently offers a successful educational program along the Wasatch Front, with 17 free programs implemented in 2011 with more than 650 participants in cities like Salt Lake, Ogden, and Provo. Because of limited resources, however, the program has been limited to the Wasatch Front. Minimal outreach has been conducted away from the Wasatch Front (such as St. George, Roosevelt and Vernal) – areas which recently have seen a dramatic population growth. Although there have been very few fair housing complaints brought by tenants/home seekers in those areas, the cases that the Fair Housing Unit has investigated leads us to believe that the issue of fair housing is something largely misunderstood throughout the State and additional awareness is needed. The new grant will allow UALD and DLC to conduct free education and outreach seminars in the target areas of Moab, St. George, Cedar City, Price, Roosevelt, Vernal and Logan.

Periodic reviews of housing practices is a critical element in the enforcement of fair housing laws and one of the most important tools that fair housing agencies, advocacy groups and others use to uncover discrimination and to gain a better understanding of how to prevent it. While blatant acts of housing discrimination still occur, more often, the discrimination is subtle and therefore more difficult to identify.

Currently, there are no agencies in Utah conducting fair housing reviews, and these review haven't been done in the State for several years. The expertise of DLC (which has conducted fair housing reviews in the past) will be invaluable as they spearhead this new initiative with a special focus on "Good Landlord Programs". Additionally, the Fair Housing Unit will work closely with DLC to identify geographic areas and protected classes where this new initiative would be beneficial in order to identify educational needs. As part of a comprehensive approach, the process will include fair housing reviews for disability, national origin, and familial status discrimination, as these three protected classes represent the largest number of fair housing cases filed with UALD. Results of the reviews will also lead to additional opportunities for the Division to conduct targeted education and outreach sessions for purposes of awareness, education and training, and to assist landlords to gain a better understanding of fair housing laws.



To view some of our videos related to fair housing follow or click the link below:

[http://laborcommission.
utah.gov/media/video/
AntidiscriminationVideos.html](http://laborcommission.utah.gov/media/video/AntidiscriminationVideos.html)

Request for Training

The Utah Antidiscrimination & Labor Division offers free training to employees, employers, civic groups, students, tenants and housing providers who want to learn more about the laws we enforce. We offer free fair housing training including understanding of rules regarding: Companion Animals, Pool Rules, HOA Rules and Reasonable Accommodation to name a few.

Please contact the Division if you would like to schedule training at: uald@utah.gov or call 801.530.6800.



Legislative Summary

By: Alan Hennebold, Deputy Director of Utah Labor Commission

The 2012 General Session of the Utah Legislature is over. From the perspective of the Labor Commission, it was an unusually quiet session, with only the following modifications to statutes and programs administered by the Commission:

- ▶ **1st Sub. HB 19** (*Rep. Wayne Harper*) Requires state agencies, including the Labor Commission, to avoid using social security numbers or other 9-digit identifiers when it is fiscally and programmatically feasible to use some other identifier.
- ▶ **HB 22** (*Rep. Jeremy Johnson*) Requires employers to report the date of hire or rehire of each new employee to the Department of Workforce Services. Although HB 22 does not directly affect the Labor Commission, it will provide useful information for the Commission's enforcement of workers' compensation, antidiscrimination, and payment-of-wages statutes.
- ▶ **SB 52** (*Sen. Stephen Urquhart*) Under existing law, motor vehicle owners/operators who wish to be considered independent contractors must, among other things, be covered by "occupational accident insurance." SB 52 adds a requirement that such insurance have at least a \$1 million coverage limit; the bill also requires that owners/operators provide proof of this insurance coverage to the Commission as a prerequisite to obtaining a workers' compensation coverage waiver.
- ▶ **SB 121** (*Sen. Karen Mayne*) Makes corrections to the Utah Workers' Compensation Act to reflect that the Commission, rather than insurance companies, now issue workers' compensation coverage waivers.

Finally, the Senate Workforce Services Committee deferred action this year on **Senator Mayne's SB 130** but approved interim study and possible legislative action next year. In summary, SB 130 addressed instances where an injured worker has medical coverage under a general health insurance plan in addition to possible coverage under workers' compensation insurance. In such cases, Senator Mayne's proposal would require the general health insurer to initially pay for medical care, subject to reimbursement by the workers' compensation insurance carrier, if the medical care is later found to be work-related.



Appellate Decisions

So far this year, the Utah Court of Appeals has issued six decisions in Labor Commission cases—five involving workers' compensation benefits and one arising under the Utah Antidiscrimination Act. The full text of these decisions is available at www.utcourts.gov/courts/appell/. Also, the Court of Appeals transferred one other case directly to the Utah Supreme Court for that Court's consideration.

Peterson Hunting v. Labor Commission and Frohardt (2012 UT App 14; issued January 20, 2012). Peterson Hunting provides guided hunting expeditions. During the fall 2009 hunt, one of Peterson's customers accidentally shot Mr. Frohardt, one of Peterson Hunting's guides. To escape liability for Mr. Frohardt's workers' compensation benefits, Peterson Hunting argued it was an "agricultural employer" exempt from the Utah Workers' Compensation Act. The Labor Commission rejected the argument and awarded benefits to Mr. Frohardt. The Court of Appeals affirmed the Commission's decision as reasonable, rational, and supported by the evidence. (**Note:** *Peterson Hunting has asked the Utah Supreme Court to review the Court of Appeals' decision.*)

Wood v. Labor Commission, Karr Painting and Uninsured Employers Fund (2012 UT App. 26; issued January 26, 2012). Mr. Wood was hired by Karr Painting to paint the interior of a multi-story building. He claimed workers' compensation benefits for injuries suffered when he fell down the building's elevator shaft. The Labor Commission denied Mr. Wood's claim because he had abandoned his work duties prior to the accident and was not performing any services for Karr Painting at the time of the accident. The Court of Appeals affirmed the Commission's decision. (**Note:** *Mr. Wood has asked the Utah Supreme Court to review the Court of Appeals' decision.*)

Murray v. Labor Commission, Parks and Recreation, and WCF (2012 UT App; issued February 2, 2012). Mr. Murray had a history of back problems. Then, while working as a park ranger, Mr. Murray stood in a patrol boat and bent over to untie the boat from its dock. A small wave caused him to lose his balance; he did not fall, but experienced some minor jostling and twisting. He experienced back pain and claimed workers' compensation benefits. In light of Mr. Murray's pre-existing back problems, the Commission evaluated his claim under the "unusual or extraordinary exertion" standard for legal causation established by the Utah Supreme Court in *Allen v. Industrial Commission*, 929 P.2d 15 (Utah 1986). The Commission concluded that the minor jostling and twisting Mr. Murray experienced was not unusual or extraordinary and did not satisfy the Allen standard. The Commission therefore denied Mr. Murray's claim.

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Appellate Decisions continued

At the Court of Appeals Mr. Murray argued that the Court should review the Commission's decision under a "correction of error" standard—in effect, substituting its judgment for that of the Commission. The Court rejected Mr. Murray's argument and held instead that the Commission's judgment should be granted some deference and reversed only if unreasonable or irrational. The Court found the Commission's decision reasonable and rational, and affirmed the denial of benefits.

Flemal v. Labor Commission, Chad Ewing and UEF (2012 UT App 41; issued February 16, 2012). Mr. Flemal claimed he was injured while working for Chad Ewing. However, Mr. Ewing told a different story—that Mr. Flemal had been fired before the accident occurred. The Commission found the testimony of both Mr. Flemal and Mr. Ewing to be unreliable. However, another witness independently corroborated Mr. Ewing's version of events. The Commission therefore concluded that Mr. Flemal's employment had ended before the accident occurred and, therefore, his injury was not work-related. On appeal, the Court of Appeals deferred to the Commission's findings and upheld the Commission's denial of benefits.

Ramirez v. Labor Commission, Auction Direct Automotive, and Auto Owners Insurance Company (2012 UT App 54; issued February 24, 2012). Mr. Ramirez had a history of back problems. He subsequently experienced back pain at work. None of the doctors who treated or examined him expressed the opinion that his work caused his back pain. The Commission therefore denied Mr. Ramirez's claim for workers' compensation benefits. Mr. Ramirez appealed to the Court of Appeals, arguing that the Commission should have referred this claim to an impartial medical panel. The Court of Appeals rejected that argument, concluding that the Commission's decision not to appoint a medical panel was reasonable and rational. Likewise, the Court affirmed the Commission's denial of Mr. Ramirez's claim for benefits.

Darvish v. Labor Commission and Salt Lake County

(2012 UT App 68; issued March 8, 2012). While Ms. Darvish was employed by Salt Lake County, a co-worker made a comment the referenced Ms. Darvish's national origin in a somewhat unfavorable manner. Ms. Darvish complained to her supervisor. Thereafter, her supervisor took various disciplinary actions against Ms. Darvish and ultimately discharged her. Ms. Darvish filed a complaint with the Labor Commission alleging her discharge was in retaliation for her opposition to unlawful discrimination—specifically, the comment that had been made by her co-worker. Ultimately, the Commission's Appeals Board concluded that the co-worker's comment was insufficient to support a claim of retaliation—no one could reasonably view the co-worker's isolated comment as constituting unlawful discrimination. The Court of Appeals agreed with the Commission and upheld the Commission's dismissal of Ms. Darvish's retaliation complaint.

Sunnyside Coal, WCF and ERF v. Labor Commission

and Cecil Henningson. (Certified directly to the Utah Supreme Court). Mr. Henningson was injured in a mine accident in 1993. Sunnyside paid some workers' compensation benefits to Mr. Henningson at that time. Two years later, in 1995 Mr. Henningson was found to be totally disabled by the Social Security Administration. Presumably, Mr. Henningson would have qualified for permanent total disability compensation under the Utah Workers' Compensation Act at that same time. However, he did not file a claim for that type of compensation until 12 years later, in 2007.

In proceedings before the Commission, Sunnyside argued that Mr. Henningson's claim was barred by the Act's statute of limitations and that the Commission lacked continuing jurisdiction to address Mr. Henningson claim. The Commission rejected Sunnyside's arguments and awarded permanent total disability compensation. Sunnyside appealed to the Court of Appeals. The Court of Appeals has now transferred the matter to the Utah Supreme Court for decision.

Rules Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.

Rule 602-2-4
Adjudication

Attorneys' Fees in Workers' Compensation Cases. Corrects a typographical error to increase fee cap for attorneys in workers' compensation cases effective October 1, 2011, rather than 2012.

Effective December 22, 2011.

R612-4
Industrial Accidents

Premium Rates. Extends existing premium assessment rates of 3.0% for the ERF and .05% for the UEF through the 2012 calendar year.

Effective January 1, 2012.

R610-3-21
Antidiscrimination
and Labor

Uniforms. Because the Commission does not have clear statutory authority for this existing rule, which generally requires employers to bear the cost of employee work uniforms, the Commission proposes to repeal the rule.

*Published in Utah Bulletin on March 1, 2012;
can be made effective on April 9, 2012.*

**R616-2-3 and
R616-3-3**
Boilers, Elevators
and Coal Mine
Safety

Adoption of updated codes. Proposal to adopt updated versions of national codes for elevators, escalators, boilers and pressure vessels.

Public Hearing scheduled for March 21, 2012

R616-2-15
Boilers, Elevators
and Coal Mine
Safety

Deputy Boiler/Pressure Vessel Inspectors. Clarifies that, in cases where deputy inspector accepts proposed corrective action, the Division Director is not required to hold a hearing on the matter.

Public Hearing scheduled for March 21, 2012

**Utah Labor Commission**

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